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ORDERS

OF

THE SUPREME COURT OF JUDICATURE

FOR

ONTARIO.

CLERK IN CHAMBERS.

~~F. A. R. N. O. L. D. I.~~

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FILED

PASSED 4TH JANUARY, 1886.

TORONTO:
ROWSELL & HUTCHISON.

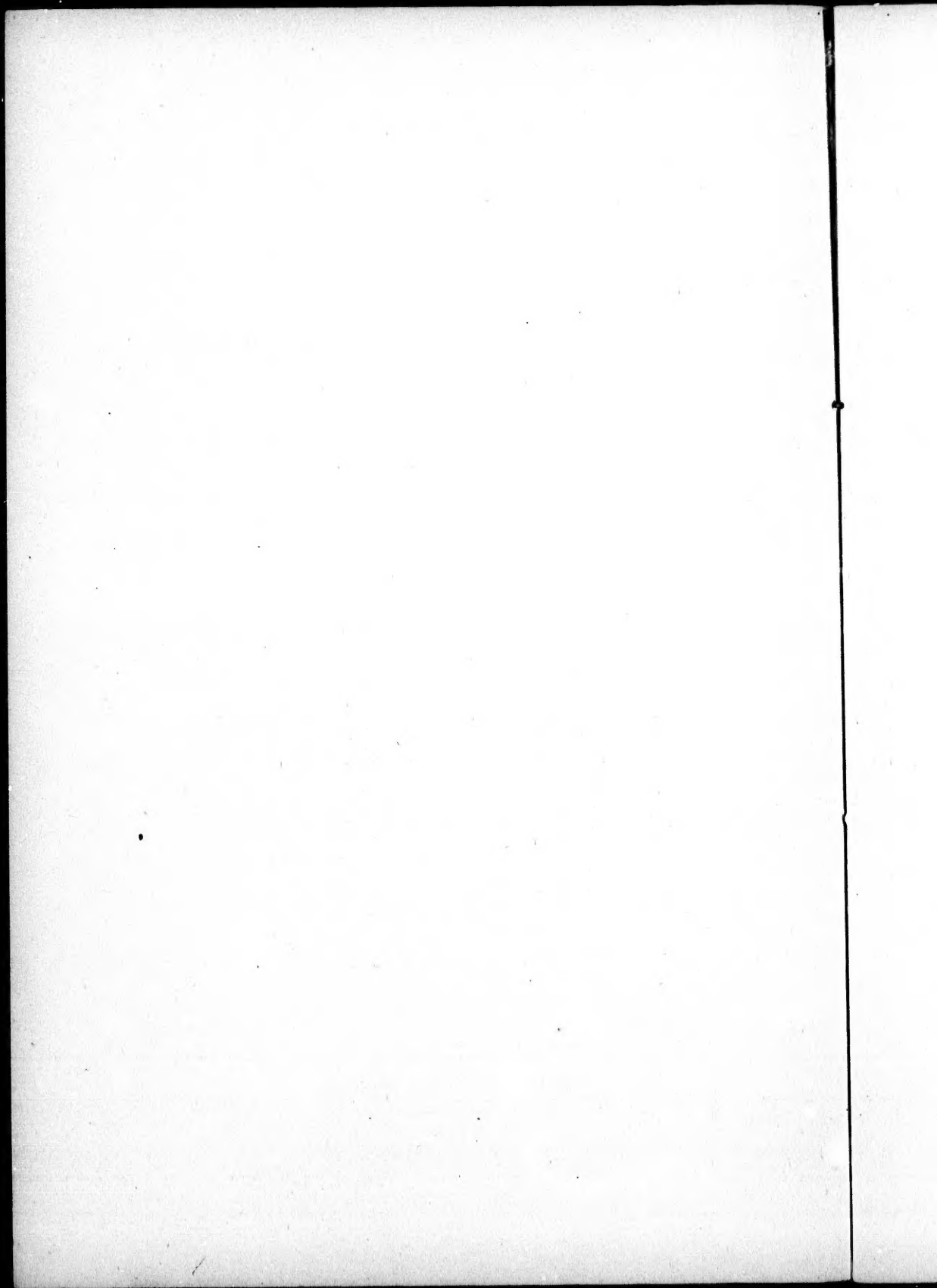
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SUPREME COURT OF JUDICATURE FOR ONTARIO.

Monday 4th January, 1886.

Court met pursuant to adjournment.

PRESENT:

The Hon. Chief Justice Hagarty, *President.*

The Hon. Chief Justice Wilson, The Hon. The Chancellor,

“ Chief Justice Cameron, “ Mr. Justice Galt,

“ Mr. Justice Burton, “ Mr. Justice Proudfoot,

“ Mr. Justice Patterson, “ Mr. Justice Osler,

“ Mr. Justice Ferguson, “ Mr. Justice Rose,

The Hon. Mr. Justice O'Connor.

The following Orders were passed:

I.

Accountant's Office.

550. In the following Rules the word “Accountant” shall mean “the Accountant of the Supreme Court of Judicature for Ontario.”

Books to be Kept.

551. The following books are to be kept by the Accountant;—

1. A Book of Directions to the Bank to receive money.
2. A Book of Cheques.
3. A Journal.
4. A General Ledger.
5. A Stock Journal.
6. A Stock Ledger.
7. A Balance Book.
8. A Book of Investments.
9. A Bond Index.
10. A Deposit Index.
11. A Private Ledger.

552. The *Directions* and *Cheques* are to be in the form approved of by the Judges of the Chancery Division, and are to be numbered consecutively.

553. The *Journal* is to show the several sums daily paid into and out of Court, and is to be so kept, that at the foot of the account for each month will appear the total amount paid into, and out of Court during such month, and the amounts to the debit and credit of the said account are to be transferred each month to the private ledger.

554. The *General Ledger* is to contain a separate account for every cause or matter, in which there is money in Court; and also, "The Suitors' Fee Fund Account," and "The Suspense Account" for each Division of the High Court, and for the Court of Appeal, each of which accounts is to show correctly the state and condition thereof for the time being.

555. In each of the suitor's accounts there are from time to time to be entered, the date, purport, or material contents, of all orders-judgments, reports, pleadings, affidavits, or other documents affecting the payment, into or out of Court, of money therein; also, every sum paid into Court, and by whom, and for what purpose paid in, and under what authority; and also every sum paid out to whom, and on what account paid out, and under what authority.

556. Each account opened in the Ledger is from time to time until the same shall be closed, to be credited with the bank interest which shall from time to time accrue in respect of such account, and a corresponding transfer of interest is to be made at the bank by cheque signed and countersigned as in other cases, and there is also to be entered in each account any statement or memorandum of any other matters material to be recorded for the information of the Court or its officers, or of any of the parties.

557. Compound interest is not to be credited to any cause or matter, or allowed or paid to any suitor in respect of any fund which has not been in Court for at least five years.

558. Whenever the balance remaining to the credit of any cause or matter to which any adult party shall be entitled shall not exceed

\$10, and two years shall elapse without such balance being claimed, the account in such cause or matter shall be closed by the transfer of such balance to "The Suspense Account" of the proper Division of the High Court, or of the Court of Appeal, but such transfer shall not in anywise prejudice the claim of any suitor entitled to such balance, to its payment.

559. In the *Stock Journal* and *Stock Ledger* are to be entered all transactions relating to Dominion stock held or purchased by the Court for suitors, other than orders, reports and other particulars as to the said stock as are entered in the General Ledger.

560. The *Balance Book* is to contain a statement to be entered therein quarterly of the balances at the credit of the various accounts in the three Ledgers at the date of such statement; such balances are to be made up to the 31st of March, 30th of June, 30th of September, and 31st of December of every year.

561. In the *Book of Investments* are to be entered under the heading of the cause or matter in which any mortgage or other security other than Dominion stock has been taken by the order of the Court, the date, and a concise statement of the material contents of such mortgage or other security, and of all subsequent orders and proceedings in relation thereto until such mortgage or other security is discharged by the order of the Court.

562. In the *Bond Index* shall be entered under the heading of the cause or matter in which the same may be entitled, a memorandum of all bonds, or recognizances, filed or deposited with the Accountant, and also receipts for all bonds, or recognizances delivered out pursuant to any order.

563. In the *Deposit Index* shall be entered under the heading of the cause or matter in which the same may be ordered to be deposited, a memorandum of all securities for money, or other documents, books, papers, or other things which may at any time be ordered to be deposited with the Accountant for safe custody, and also receipts for all such documents, books, papers, or other things so deposited which shall be delivered out pursuant to any order.

564. In the *Private Ledger* is to be entered "The General Interest Account," "The Toronto General Trust Company Account," the "Bank Account," and "The Account of Official Guardian *ad litem*."

565. The books kept under these orders, except the *Private Ledger*, are to be open to inspection by any person interested in any account entered therein, or his solicitor or agent. The Accountant is to give a certificate of the state of any account, or an extract therefrom, or of any entry in such books, at the desire of any person interested, or his solicitor or agent, and all such certificates shall be signed by the Accountant, or the Chief Clerk in the Accountant's office.

566. All mortgages and other securities taken under an order or judgment of the Court are to be taken in the name of the Accountant, his successors and assigns, unless such order or judgment expressly directs the same to be taken in the name of some other person or persons.

Audit of Accounts.

567. One Auditor or more shall be appointed to the Supreme Court. It shall be the duty of the Auditor in each year to examine the several account books in the Accountant's office and to compare the balances entered in the *Balance Book* with the balances entered in the Ledgers, and with the Bank Account, and to certify such balances if found to be correct, and to make such further and other examination of the said book as he may think necessary for the proper audit thereof, and to report forthwith, after making such examination, the result thereof to the Judges of the Chancery Division, and from time to time to make such suggestions to the said Judges as may appear to be desirable for the efficient keeping of the accounts in the said Accountant's office.

568. The remuneration of each Auditor is hereby fixed at the sum of \$100 per annum, for which sum a cheque is to be issued payable out of the General Interest Account, upon the fiat of any Judge of the High Court.

Salaries and Expenses of Office.

569. During the month of January in each year the Accountant shall present to the Judges of the Chancery Division a statement of the amounts paid for salaries and expenses of the Accountant's office during the previous year, and the names of the persons to whom such amounts were respectively paid, and also an estimate of the salaries and expenses of the Accountant's office for the current year, and such estimates shall be examined by the Judges of the Chancery Division, who shall be at liberty to make such variations therein as they may think necessary, and when approved of by them, a fiat shall be endorsed thereon or appended thereto which shall be signed by one or more of such Judges, authorizing the payment from time to time as may be requisite of such sums as shall be necessary, not exceeding in the aggregate the amounts specified in the said estimates, for the services and purposes mentioned in the said estimates.

570. Cheques for the salaries and expenses included in such estimates which shall be so approved of as aforesaid may from time to time as occasion may require, be signed, countersigned, and issued to the parties entitled, without further order.

II.

Payment of money out of Court to Married Women, or to Representatives of deceased person.

571. Where money or stock, or securities in Court are directed by an order to be paid or transferred to an unmarried woman, and she marries before payment of the money or transfer of such stock or securities, the Accountant, if the same do not in the whole exceed \$600 of principal money, or \$50 in annual instalments, may draw for the money or make or execute a transfer of such stock or securities, in favour of such woman, upon an affidavit of herself and her husband that no settlement or agreement for a settlement has been made or entered into before, upon or since their marriage; or in case any settlement or agreement for a settlement has been entered into, then upon an affidavit by the woman and her husband, identifying the settlement or

agreement for a settlement, and stating that no other settlement or agreement for a settlement has been made or entered into as aforesaid, and an affidavit of the solicitor of the woman and her husband, that such solicitor has carefully perused such settlement or agreement for a settlement, and that according to the best of his judgment, such money stock or securities are not, nor is any part thereof, subject to the trusts of the settlement or agreement for a settlement, or in any manner comprised therein or affected thereby.

572. Where moneys or stock, or securities in Court are directed to be paid out of Court or transferred to the legal personal representative of any person, or to persons to be named in an order or report, and such moneys, stocks, or securities are reported or found to be due to any persons as legal personal representatives, the same or any portion thereof for the time being remaining unpaid or untransferred, may, upon proof, to the satisfaction of the officers signing and countersigning the cheque, of the death of any of them whether before, on or after the day of the date of the order, be paid to the survivors or survivor of them.

573. Where moneys, stock or securities in Court are directed to be paid out or transferred by the Accountant to any person named in the order or judgment, or named, or to be named in any report, the same or any portion thereof for the time being remaining unpaid or untransferred, may, on proof to the satisfaction of the officers signing and countersigning the cheque of the death of such person, whether before, on, or after the date of the order or judgment, and that his legal personal representatives are entitled thereto, be paid or transferred to the legal personal representatives of such deceased person or the survivors or survivor of them.

574. No principal sum of money, nor any stocks, funds, shares or securities shall, under Rules 572 and 573, be paid, transferred or delivered out of Court to the legal personal representatives of any person under any probate, or letters of administration, purporting to be granted at any time subsequent to the expiration

of six years from the day of the date of the order, or judgment, directing such payment, transfer or delivery.

575. No interest or dividends shall under Rule 574 be paid out of Court to the legal personal representatives of any person under any probate, or letters of administration, purporting to be granted at any time subsequent to the expiration of six years after the day of the date of the order or judgment directing such payment, or after the last receipt of such interest or dividends under such order or judgment which shall last happen.

576. Where money is directed to be paid out of Court to any persons named or to be named in an order or report, and such money shall, by such order or report, be found to be due to them as partners, the same may be paid to any one or more of such partners by cheque payable to the firm.

III.

Investment of moneys in Court in Dominion Stock.

577. Persons entitled to money in Court may have a sufficient amount of the unappropriated Dominion Stock standing in the name of the Accountant appropriated as an investment of such money, or of part thereof, at par value.

578. If all parties interested consent in writing, the consent is to be filed with the Accountant, and he is to make the appropriation without an order being drawn for the purpose, and is to enter the consent in the Stock Ledger under the heading of the cause or matter, with the material contents of all orders, judgments and reports necessary to show who are interested in such account and the shares in which they are respectively interested therein, which may not be entered in the General Ledger.

579. If there is no unappropriated stock applicable to the purpose, a direction signed and countersigned in the same manner as a cheque, is to be delivered to the bank for the purchase, to be made in the name of the Accountant, and when the purchase is made a cheque is to be drawn for the amount and the brokerage charges, signed and countersigned as aforesaid, and like entries are to be made in the Stock Ledger.

580. The interest on stock so appropriated or purchased, is, each half year, to be credited to the various accounts entitled thereto ; and wherever interest is ordered to be paid from time to time to any person in respect of the moneys which shall have been so invested he is to be entitled to receive a cheque therefor without further order.

581. Where an order or judgment directing the investment from time to time of any interest or dividends accruing upon any stocks, funds, shares or securities standing in the name of the Accountant in trust in or to the credit of any cause, matter or account, or upon any stocks, funds, shares or securities which may be directed to be transferred into the name of the Accountant, or to be carried over from one account to another, or upon any stocks, funds, shares or securities which may be directed to be purchased with any cash in Court, or with any cash to be paid into Court, with his privity, is brought to the Accountant for the purpose of having such direction for investment carried into effect, the Accountant may from time to time until he receives notice of an order or judgment to the contrary without any further request invest the interest or dividends so directed to be invested, together with all accumulations of interest or dividends thereon, as soon as conveniently may be after they accrue due and have been received, in the purchase of the particular description of stocks, funds, shares or securities named in the order or judgment directing such investment, and place such stocks, funds, shares or securities when purchased to the credit of the cause, matter or account respectively, as may be directed by such order or judgment.

IV.

PROCEEDINGS IN CHAMBERS.

Judges' Orders.

582. All orders made by a Judge of the High Court in Chambers in Toronto shall be signed by the Clerk in Chambers, whose duty it shall be to see that such orders are in due form before signing the same.

Entry of Chamber Orders.

583. All orders for administration, or partition, made in Chambers shall be drawn up as judgments and entered in like manner as other judgments are required to be entered. All orders declaring persons lunatics, or for the sale of infants' estates, or for payment of money into, or out of, Court, or for continuing proceedings upon the death or transmission of interest of any party to an action, and all final orders of sale or foreclosure, and all vesting orders, shall be entered in full in a book to be provided for the purpose, before the same shall be issued or acted on.

Orders for payment of money out of Court.

584. The Master in Chambers may order the payment of money out of Court, or dispense with payment of money into Court, in all actions and matters, except upon applications under Chancery Orders 639 and 640, but the authority hereby conferred on the Master in Chambers is not to extend to any Local Master, or Local Judge.

V.

PROCEEDINGS AFFECTING INFANTS AND LUNATICS.

585. All applications for the sale, mortgage, lease or other disposition of an infant's estate shall be made to the Master in Chambers, and no reference in any such matter is to be directed to any Local Master, except by leave of a Judge of the Chancery Division.

586. The Official Guardian shall be duly notified of all applications under the last preceding Rule.

587. It shall not be necessary to examine any infant under 14 years of age, in support of a petition affecting such infant's estate, unless required by a Judge; but, unless otherwise ordered, it shall be sufficient for the officer, before whom such infant shall be produced, to certify that he has been produced, and that he is under the age of 14 years.

588. The Official Guardian shall be appointed guardian *ad litem* to lunatics, or persons of unsound mind, in all actions or matters in which it shall be necessary to appoint a guardian *ad litem*, for any such lunatic, or person of unsound mind, unless a Judge shall otherwise order.

589. Where any money (other than for costs) is recovered by or on behalf of an infant, or a person of unsound mind by his guardian, next friend, or committee, the same shall, unless otherwise ordered, be paid into Court subject to further order; and no payment to the guardian, next friend, or committee, of moneys due to such infant or person of unsound mind otherwise than for the costs of any such action, shall be a valid discharge to the party making such payment as against the infant or person of unsound mind. Every writ of Execution for the levying of any such moneys is to be endorsed by the Officer issuing the same with the following notice "All moneys made under this execution, other than costs, are to be paid into Court by the Sheriff, as required by Rule 589."

VI.

TRIAL OF ACTIONS.

590. Any action in the Queen's Bench, Chancery, or Common Pleas Divisions which is not to be tried by a jury, may be entered for trial at the Assizes or Sittings, or at the special sittings of the Chancery Division appointed for the place named for the trial of such action.

591. If both parties enter the action for trial at the same Assizes or the same Sittings it shall be tried in the order of the plaintiff's entry. If both parties give notice of trial, one for the Assizes and the other for the Chancery Sittings, the trial shall take place at the Court for which the plaintiff has given notice of trial unless the Master in Chambers or a Judge shall otherwise order.

592. All actions in the Chancery Division which are to be tried by a jury, shall be entered for trial at the Assizes holden at the place named for trial of such action, without an order, and without transferring such action to any other Division.

VII.

COSTS.

593. All bills of costs, or disbursements, in which any infant, lunatic, or person of unsound mind, is interested, or which shall be payable out of any estate in which any infant, lunatic, or person of unsound mind, is interested, are to be revised by one of the Taxing Officers of the Supreme Court at Toronto, before the amount thereof is inserted in any certificate, report, order, or judgment.

594. It shall be the duty of every officer issuing any writ of execution, or renewal thereof, to indorse upon the same a memorandum signed by him, of the amount, or amounts respectively hereinafter mentioned, which the party issuing such writ is entitled to receive for suing out such writ or renewal and placing it in the Sheriff's hands, including all attendances, indorsements, letters, &c., and for his costs of any prior, or other writs, or renewals, specifying the amount allowed for each writ or renewal and no sum not so endorsed is to be collected for such costs. The amounts to be allowed shall be as follows: for any writ of execution in the High Court \$6.00; for any writ of execution in the County Court \$4.00; for any renewal in the High Court \$4.00; for any renewal in the County Court \$2.50.

VIII.

MISCELLANEOUS.

Affidavits when Corporations are Suitors.

595. Any affidavit in an action or proceeding to which a municipal or other corporation is a party may be made by any officer; servant, or agent of such corporation having knowledge of the facts required to be deposed to, and who shall state therein that he has such knowledge.

IX.

Proceedings in default of Pleading.

596. When any party shall make default in delivering a statement of defence, demurrer, or subsequent pleading, within the

time limited therefor, in cases where interlocutory or final judgment cannot be signed, the opposite party may, at any time before such pleading is filed, upon proof of such default, by præcipe to the officer with whom the pleadings are filed, require him to note that the pleadings in the action are closed as to the party in default; and thereupon the officer shall enter such note in the pleadings book accordingly, and thereafter no pleading by such party so in default, shall be received or filed without the order of a Judge.

X.

Examination for Discovery.

597. The oral examination upon oath of a party to an action, touching the matters in question in the action, may be had before the trial by any other party thereto adverse in interest, without any affidavit, upon an appointment issued by a Special Examiner in the county where the party required to be examined resides.

XI.

Evidence on Motions.

598. A party to any action or proceeding may, by a writ of subpoena *ad testificandum*, or *duces tecum*, require the attendance of a witness to be examined before the Court, or before any officer having jurisdiction in the County where such witness resides for the purpose of using his evidence upon any motion, petition, or other proceeding before the Court or any Judge or judicial officer in Chambers. Forty-eight hours notice of the examination is to be given to the opposite party or parties, and the cross-examination in such case, is to follow immediately upon the examination and is not to be deferred to any future time.

XII.

Filing Reports.

599. Reports shall be filed in the office where the proceedings are carried on, and shall at the request of any party to the pro-

ceeding be forwarded in cases pending in the Queen's Bench and Common Pleas Divisions, to the office of the Registrar of the Division in which the action is pending, and in cases pending in the Chancery Division to the office of the Clerk of Records and Writs.

XIII.

Proceedings at the Sittings of the Weekly Court.

600. Motions and other matters requiring to be set down for the weekly sittings of the Court shall be so set down for hearing at latest on the day before such sittings, unless leave shall be given by a Judge to bring on such motion otherwise.

XIV.

Provision in case of death of Suitor after Verdict.

601. Rule 383, is hereby amended by adding the following: "And whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death."

XV.

Solicitors' Rolls.

602. There shall be one Roll of Solicitors of the Supreme Court of Judicature for Ontario, and all persons who shall be admitted as Solicitors after the first day of January, 1886, shall sign the same upon taking the prescribed oaths.

603. The Registrar of the Common Pleas Division shall have the custody of such Roll and of all former Rolls of Attorneys and Solicitors; and he shall, on the request of the Registrar of the Court of Appeal, or of the Registrar of any other Division of the High Court, transmit such Roll to such officer, who shall forthwith return the same to the Registrar of the Common Pleas Division when the purpose for which the same may be required shall have been accomplished.

Barristers' Rolls.

604. *Mutatis mutandis*, the Roll and Rolls for Barristers shall be in the same form and custody as the Solicitors' Roll and Rolls.
